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BRANHAM *v.* CLINCHFIELD COAL CORPORATION *et al.*

Sept. 19, 1918.

[96 S. E. 761.]

Last Instruments (§ 23 (3)*)—Evidence—Degree of Proof.—Where defendant claimed title through unrecorded title bond or deed executed 28 years before institution of suit, and lost or destroyed at time of action, evidence to establish such conveyance and the loss of the instruments must be strong and conclusive.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 479.]

Appeal from Circuit Court, Wise County.

Action by the Clinchfield Coal Corporation and another against Wilburn Branham and others. Decree for plaintiff, and defendant named appeals. Reversed.

Dotson & Kelly and *Bullitt & Chalkley*, for the appellant.

Morison & Robertson, *Vicars & Perry* and *W. H. Rouse*, for the appellees.

CITY OF ROANOKE *v.* SARTINI.

Sept. 19, 1918.

[96 S. E. 763.]

1. Municipal Corporations (§ 759 (2)*)—Injuries on Street—Paper Street.—City is not required to open all its streets for public travel, and its liability for injuries to pedestrian does not attach as to street neither accepted, opened, nor improved; but, if city permits use of street as such, though without improving it, it is liable.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 905.]

2. Municipal Corporations (§ 759 (5)*)—Acceptance of Street as Highway—Liability for Injuries.—Where land company platted street, and city graded on both sides of excavation, exercised acts of ownership, and erected street signs, pedestrians using street, though for vehicles it was impassable in part on account of excavation, city accepted street as highway, and was liable for negligence causing injuries to pedestrian.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 905.]

3. Municipal Corporations (§ 759 (5)*)—Streets—Reservation of Section.—City, by mental reservation of officials, cannot segregate small section of continuous street, and avoid customary obligations to keep in proper repair, etc., the part so reserved; it must give public notice of reservation, as by erection of barrier, etc.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 905.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.